(24)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.627 /2004

APPELLANT (IN JAIL) — RAMNIHORA S/O RAMADHAR AGE 36 YEARS R/O VILLAGE JOK P/S. CHAKARBHATA DISTT. BILASPUR (CG)

VERSUS

RESPONDENT — STATE OF CHHATTISGARH THROUGH : P.S. CHAKARGHATA BILASPUR, DISTT. BILASPUR (C.G.)

Present:

Mr. Hemant Kesharwani, counsel for the appellant.
Mr. Arun Sao, GA for the State/respondent.

ORAL JUDGMENT

(27th September 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 29th January 2004 passed in S.T.No. 209/03 whereby learned Special Court (Atrocities) Bilaspur has convicted the appellant under Section 436 of the IPC and sentenced him to undergo RI for 10 years and pay a fine of Rs.1,000/-, in default of payment of fine to undergo additional RI for one month.

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(25)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

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	2. Case of the prosecution in brief is that on the report of Kanchanbai (PW-1), mother of the appellant, Dehati Nalishi of Ex.P/4 was recorded wherein it was mentioned that on the date of incident appellant Ramnihora came to her house at about 2.00 p.m. in an inebriated condition, started abusing her in filthy language and claiming that the house situated in front of her house belongs to him and he shall set that house on fire, brought kerosene oil from his house and after damaging the wall with pickaxe, spread kerosene oil over the house and set it on fire with the matchstick. Her son Ramgopal and other family members extinguished the fire. However, the villagers did not come forward on account of fear of the appellant. He also threw her on the ground, pressed her neck and beat her. On the basis of Dehati Nalishi of Ex.P/4, First Information Report of Ex.P/7 was record in the Police Station Chakarbhata under Sections 436, 294, 506 and 323 of the IPC. 3. During investigation spot Panchanama was prepared vide Ex.P/1. The complainant was sent for medical examination to District Hospital, Bilaspur where Dr. (Smt.) M. Sen (PW-4) examined the complainant and gave her report of Ex.P/3. Site plan of Ex.P/5 was also prepared. After completing investigation charge sheet was filed against the appellant in the Court of Judicial Magistrate First Class,	

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उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

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Bilaspur and after committal the same was received on transfer by learned Special Court for trial.

4. During trial the prosecution examined five witnesses. In his statement under Section 313 of the Cr.P.C. the appellant pleaded innocence and false implication and also examined defence witness Ram Gopal Yadav. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the appellant submits that for the purposes of conviction under Section 436 of IPC, the prosecution is required to prove that mischief by fire was committed by the accused, resulting in destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for custody of property. However, in the instant case from perusal of spot Panchanama as also the site plan, it would be evident that the house which was allegedly set on fire by the appellant, has been described as *Kotha* and there is no evidence that the same was used for any of the purposes described in Section 436 of the IPC. He further argued that except the complainant and her husband, no other independent witness, though available, was examined by the prosecution and since there was a dispute between the

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(27)

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

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complainant and the appellant in relation to partition matter, he has been falsely implicated in the above offence.

6. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

7. I have heard learned counsel for the parties and have perused the material available on record including the impugned judgment.

8. Conviction of the appellant is based on the statements of PW-1 Kanchanbai and PW-2 Ramadhar, mother and father of the appellant, respectively.

9. PW-1 Kanchanbail, mother of the appellant, has categorically stated that there is a partition in their family and their sons reside separately. She is residing with her younger son Santosh. Accused has sold the agricultural filed which he had received in partition and he is in the habit of abusing and beating her after consuming liquor. On the date of incident in the afternoon when she was in her home with her husband, accused came from Bilaspur after consuming liquor and started abusing her in filthy language and chased her to beat. Her husband came to save her, whereupon he also chased him. Out of fear of the appellant both of them hid themselves in

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

their house. Thereafter, the accused brought kerosene oil, spread it over the house and set the house on fire with matchstick. On being threatened by the accused, the neighbourers did not come forward to extinguish fire and they also remained inside the house out of fear. The roof was completely burnt, resulting in loss of Rs.3,000/- to 4,000/-. Somebody from the village telephoned to police station, upon which police arrived there and recorded her report, seized the container of kerosene, matchsticks and burnt part of the roof. She denied the suggestion that she herself, her husband and her son together set their house on fire. She has also denied that she was ready to compromise on the condition that the accused gave the land which had fallen in his share to them. On the contrary, she has stated that in fact the accused made such proposal, which was declined by her. Her version is duly corroborated by the statement of P.W.-2 Ramadhar, husband of the complainant and father of the appellant.

10. P.W.-2 Ramadhar has stated that after their house caught fire, the roof was completely burnt and they fled from there from the backside of their house. P.W.-3 Chandraprakash Tiwari has also said that he has seen the house of Kanchanbai. Animal Barn part of Kanchanbai's house was burnt. P.W.4, Dr. Smt. M. Sen, who examined the complainant, has stated that the complainant was complaining pain over both of her

(29)

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

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wrists, neck and chest. However, there was no apparent injury over her person.

11. P.W.-5, J. K. Rathore, A.S.I. has stated that on telephonic information, S.H.O. directed him to go to village Joki, whereupon he reached the house of Kanchanbai and prepared the Panchnama of Ex. P/1 . The roof of animal barn was burnt. He has also effected seizure of matchstick and Kerosene oil container. The defence witness Ramgopal Yadav, brother of the appellant and son of the complainant has stated that veranda of the house of his father was set on fire. However, he does not know as to who set the same on fire and his parents also did not tell him as to who has set the veranda on fire. A small portion of the veranda was set on fire. Kotha was not set on fire.

12. Thus, from the statements of P.W.-1 & P.W.-2 and as also from the statement of defence witness Ramgopal Yadav, it is established that dwelling house belonging to the complainant Kanchanbai, was set on fire.

13. So far as the involvement of the appellant in setting on fire the dwelling house of the complainant is concerned, his own mother and father have categorically stated the whole sequence of events and the background in which the house was set on fire by the appellant on the date of incident. As far

30

XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

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as Defence of the appellant that in fact the complainant, her husband and son Santosh themselves set their house on fire and lodged a false report against him on account of some partition related dispute is concerned, taking into consideration the fact that the mother and the father of the appellant have deposed against their own son i.e. appellant, their version making serious allegations against the appellant can not be doubted. There is no illegality or infirmity in the impugned judgment of the trial Court convicting the appellant under Section 436 of the I.P.C.

14. Considering the overall facts and circumstances of the case and the evidence available on record, this Court is of the considered opinion that ends of justice would be served if the jail sentence of 10 years R.I. imposed upon the appellant by the trial Court under Section 436 of the I.P.C. is reduced to 7 years R.I.

15. In the result, the appeal partly succeeds. While maintaining conviction of the appellant under Section 436 of the I.P.C., the jail sentence of 10 years R.I. is reduced to R.I. for 7 years. However, the fine sentence shall remain as it is.

Sd/-
Dhirendra Mishra
Judge

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